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Economic Regulation Authority
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Submitted online via: [Current Consultations - Economic Regulation Authority Western Australia](#)

Public Transport Authority - Train management guidelines, train path policy, over-payment rules

Co-operative Bulk Handling Limited (**CBH**) acknowledges that the Public Transport Authority (**PTA**) has submitted train management guidelines, a train path policy and over-payment rules (together **Part 5 instruments**) to the ERA as required under Sections 43(3), 44(2) and 47(1) of the *Railways (Access) Code 2000* (WA) (the **Code**) respectively.

CBH is Australia's largest co-operative and is owned and controlled by around 3,500 Western Australian Grain Growers. CBH's core purpose is to create and return value to WA growers, both current and future. CBH operates a bulk handling supply chain which manages the complexities of accumulating, transporting and exporting grain from growers utilising both road and rail infrastructure.

While the majority of grain exports transported via rail to CBH's bulk terminals utilises the Freight Rail Network (currently managed by Arc Infrastructure), CBH have previously utilised the PTA network to access maintenance facilities and containerised grain is currently transported via a contractor to Fremantle Port.

CBH may therefore be impacted by PTA's Part 5 instruments as an indirect user of the PTA network and also provides this submission on the basis that PTA's Part 5 instruments might set a precedent for other rail network owners that submit Part 5 instruments to the ERA for approval, including for those networks that CBH currently accesses or intends to access in the future.

CBH's commentary on PTA's Part 5 instruments is high level, raising two overarching points for the ERA's consideration:

1. The requirement for ERA's approval of Part 5 instruments to be consistent with Section 20 (4) of the Railways (Access) Act 1998 (**the Act**), which sets out what the Regulator must take into account when performing its functions under the Act or the Code, as well as the broader intent of the legislation (the Code and the Act) as set out in section 2A of the Act, to encourage the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations.
- CBH considers that for Part 5 Instruments to encourage efficient use of railway facilities they must be reasonable and appropriately balance the interests of, and provide appropriate protections to, both access seekers and railway owners. This is also consistent with the matters the ERA must take into account when exercising its discretion whether to approve or determine Part 5 Instruments under the Code.
- CBH considers that some of the provisions within PTA's Part 5 Instruments may not be reasonable. For example, the PTA's proposed train management guidelines have reduced previously approved notice periods for planned network possessions extending beyond 48

hours, from at least 6 months to 30 business days under section 5.2.2. Adequate notice of planned possessions is of critical importance to access holders, as the inability to use the rail network can significantly impact access holder's operations and have broader economic consequences.

- Furthermore, Section 4.3 of PTA's train path policy allows the PTA to exercise absolute discretion with regards to withholding consent in relation to requests for permanent variations of scheduled train paths. The PTA should not be able to withhold consent unreasonably.
2. The requirement for consistency across Part 5 Instruments and between Standard Access Provisions (**SAP**).
- Inconsistencies between Part 5 instruments and SAP may create uncertainty regarding obligations, increasing the risk of dispute between parties.
 - CBH considers that inconsistencies are currently limited due to the 'short form' nature of PTA's proposed SAP and if these arise, they will need to be addressed.

CBH submits that the ERA, in exercising its powers under sections 43, 44 and 47 of the Code, should not approve PTA's proposed Part 5 instruments without considering the comments made by CBH in this submission. Furthermore, the ERA's approval of PTA's Part 5 instruments should not set a precedent for other rail network owners that have submitted or will submit Part 5 instruments given the different circumstances which apply to PTA and other rail network owners.

Please note, if CBH has not made a comment in respect of a specific principle in the Part 5 instruments, that should not be interpreted to mean CBH endorses that principle. CBH's commentary on the Part 5 Instruments is high level and for the purpose of ensuring that, when considering rail networks in respect of which CBH is a current or likely access holder, the ERA will ensure that the relevant network's Part 5 instruments are reasonable and, where appropriate, consistent with that network's SAP.

The establishment of Code-compliant, ERA approved Part 5 instruments is important as they provide a set of independently reviewed and approved mechanisms to support access to and operation of the rail network. Having sufficiently balanced, and, where appropriate, consistent Part 5 instruments, is critical to supporting the achievement of the intended outcomes of the Code with respect to transparency, certainty, and efficiency.

The opportunity to make a submission is greatly appreciated and we encourage you to contact the undersigned or CBH's Network Planning Manager, Kristina Primus on 08 9237 9590 or kristina.primus@cbh.com.au, to discuss this matter further.

Yours sincerely,

For: Co-operative Bulk Handling Limited



Rob Dickie
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